IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Gopi Chand vs. Khem Chand

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S.B. Civil First Appeal No.22/1989
under Section 96 C.P.C. against the
judgment and decree dated 26.11.1988
passed by Shri R.P.Mitruka RHJS,
Additional District Judge No.2,
Bharatpur Camp at Bayana in Original
Civil Suit No.102/86 decreeing the suit
of the plaintiff respondent.

Date of Judgment :::::: October 12, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.Gopal Garg with
Mr.Saran Saini for the appellant.

Mr.P.K.Sharma for the respondent.

BY THE COURT (ORAL):-

The facts in brief giving rise to this appeal are

that the plaintiff respondent filed a suit against the defendant appellant for recovery of a sum of Rs.15,400/- alleging therein that on 15.6.1983 the defendant took a loan of Rs.10,000/- from him on the interest @ 1.50% per month for the purpose of his business by executing a receipt on the same day. Despite demand and notice when the defendant failed to pay the loan amount with interest, the suit was filed.

In the written statement, the defendant denied the fact of obtaining loan and giving any receipt of the same. It was mentioned that the plaintiff forged the receipt. It was also mentioned that the receipt is not admissible in evidence as the same was not written on stamp of proper value and that there are so many cutting and over rightings in the receipt. The defendant mentioned that the plaintiff was engaged in the business of money lending without there being any licence under the Rajasthan Money Lending Act. The defendant took further objection that the plaintiff did not comply with the requirements of Sections 22 and 23 of the Money Lending Act as no details of loan and balance were supplied to him. It was also averred that as the defendant was serving in Roopwas Kriya Vikray Sahkari Samiti and was not doing business, in view of provisions of Section 29 the plaintiff was not entitled to charge

interest beyond 12% per annum.

Learned trial court after framing issues, proceeded to record evidence of the parties. In support of his case, the plaintiff examined three witnesses while the defendant examined two witnesses. Four documents were exhibited from the side of the plaintiff.

After recording evidence of the parties and hearing both the side, the learned trial court vide judgment dated 26th November,1988 decreed the suit of the plaintiff for Rs.15,400/- with interest of 6% per annum from the date of judgment till realisation. Hence, this appeal.

Heard learned counsel for the parties.

Learned counsel for the appellant has contended that the learned trial court has neither properly appreciated the evidence of the nor considered the legal provisions in accordance with law and, therefore, the findings arrived at by the learned trial court on the issues framed in the case are perverse and bad in law.

Learned counsel appearing for the plaintiff respondent on the other hand while supporting the findings of the

learned trial court has contended that the findings of the learned trial court are based on proper evaluation of the evidence in accordance with law, therefore, the same require no interference.

It appears that during the course of recording evidence of the plaintiff, the defendant raised an objection regarding admissibility of Ex.1 and the learned trial court while recording the statement of plaintiff on 8.7.1987 over-ruled the objection holding that the document Ex.1 is admissible in evidence.

After hearing learned counsel for the parties, I have gone through the material and evidence available on record as well as the impugned judgment.

Issue No.1 is related to as to whether on 15.6.1983, the defendant appellant took a debt of Rs.10,000/- from the plaintiff respondent at the interest of Rs.1.50 per hundered per month for business purpose. To prove this issue PW.1 Khem Chand in his statement has deposed that on 15.6.1983 the defendant took loan of Rs.10,000/- from him for which rate of interest settled was Rs.1.50 per hundered per month. He has further deposed that in addition to the

service, the defendant was engaged in business of food grains. The amount was taken for business purpose for which the defendant Gopi Chand himself wrote Ex.1 which bears signagure of Gopi Chand from `A' to `B' and also bears signatures of Ram Tikaya PW.3 and Yogendra Kumar PW.2. The witness deposed that when the defendant did not make payment of the loan amount, he sent notice Ex.2 through registered post. The witness admitted that he was lending money for which he was having a licence (Ex.5). The witness deposed that he sent half yearly statement of the loan accounts to the defendant and also gave a pass-book to the defendant. PW.2 Yogendra Kumar and PW.3 Ram Tikaya have supported the statement of PW.1 Khem Chand. They have admitted their signatures on Ex.1. Witness Yogendra has stated that the defendant himself has written Ex.1 and also put his signatures while witness Ram Tikaya has deposed that the defendant took the loan for business purpose. As against this, the defendant has come with this case that he took Rs.10,000/- for Sahakari Samiti and the plaintiff got his signatures on Ex.1 but his statement does not find support from the statement of DW.2 Mangi Lal. Defendant has admitted that Ex.1 is in his hand writing and bears his signatures. Thus, from the evidence produced by the plaintiff in support of issue No.1 it is clear that the plaintiff has been able to prove this issue by producing

documentary as well as oral evidence. Therefore, the finding of the learned trial court on issue No.1 does not call for any interference.

Sofar as issue No.3 is concerned, the plaintiff by producing evidence has been able to prove this fact that the defendant took the loan amount for business purposes. Therefore, the burden to prove the fact as to whether the provisions of the Money Lenders' Act are applicable or not lies on the defendant. The defendant came with this case that he was not engaged in any business and did not borrow the amount for business purposes. At one hand the defendant has refused to borrow any amount from the plaintiff on the other hand he has come with this plea that he borrowed this amount for the business of Sahkari Samiti and executed Ex.1 on behalf of the Samiti. Therefore, from this statement of the defendant this fact stands proved that he borrowed the amount for business purposes. The plaintiff has come with a definite plea and evidence that the defendant was engaged in business also while serving in the Sahkari Samiti and borrowed the amount for business purpose. In this view of the matter, I am of the opinion that the finding of the learned trial court on issue No.3 supported by the definition of `loan' as mentioned in Sectin 2(9)(j) of the Rajasthan Money Lenders' Act and also the law laid down by this Court in the case reported in 1987 (2) WLN 504 does

not call for any interference.

So far as issues No.4 and 5 are concerned, as has been discussed above, as the loan was advanced by a businessman to another businessman, the provisions of the Money Lenders' Act are not applicable. Therefore, even if it is taken that there has been non-compliance of provisions of Sections 22 and 23 of the Act, no relief can be given to the defendant. It is also clear that when the `loan' does not come within the perview of the provisions of the Rajasthan Money Lenders' Act, the rate of interest settled between the parties cannot be reduced or altered. In this view of the matter, findings of the learned trial court on issues No.4 and 5 are just and proper and do not call for any interference.

For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma),J.

Bairwa